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Testimony on Equal Access to Justice – Senate Bills 100 and 101
Senate Elections and Government Reform Committee
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My name is Charlie Owens and I am the State Director for the National Federation of Independent Business, an advocate for small businesses owners since 1943. Thank you for this opportunity to come before the committee and participate in this important discussion about small business and fairness in legal proceedings involving a department of state.

We are here before the Senate Committee on Elections and Government Reform to support legislation that would end the unfair advantage that state agencies have when dealing with small business owners in regulatory disputes.

Senate bills 100 and 101, sponsored by Senators Tom Casperson (38th District) and David Robertson (14th District), would require a state agency to pay the legal costs of the prevailing party when that state agency loses a lawsuit involving a regulatory issue. The legislation is a reintroduction of bills approved last year by the Senate but not the House of Representatives.

This change would curb the current approach by state departments and agencies of telling a citizen or business owner that if they don't like the 'deal' a state agency proposes to resolve an issue they can 'take it to court. Agencies use this tactic in place of good faith negotiation because they know that taxpayers and business owners will have to settle because they do not have the financial ability to fight the state (who has an almost unlimited supply of taxpayer dollars to spend on litigation) in court.

While existing law does require a state agency to pay the court costs of a prevailing party in a lawsuit, the way the current language is written limits this provision to cases that are considered "frivolous" by the presiding officer in the hearing. In most cases the "presiding officer" is an employee of the state.

In addition, current law does not allow anyone with a net worth of more than \$500,000, or an owner of a business with a net worth exceeding \$3,000,000 or with more than 250 employees to be awarded court costs if they prevail against the state.

While it may seem to the general public that business owners with this kind of net worth should be able to pay their own court costs, every business owner knows that 'net worth' does not translate into cash in the bank for fighting an unfair rule dispute with a state agency that has unlimited legal resources. The change in the law made by Senate Bills 100 and 101 would encourage state agencies and departments to work with permit applicants, property owners, taxpayers and business owners to resolve issues rather than have department staff present constituents with an ultimatum – to do what the department wants or else take their case to court and incur steep costs - even if they prevail.

Let me conclude by again emphasizing our support for Senate bills 100 and 101 and we again thank you for the opportunity to present these views to this committee and thank you for your support of Michigan's small business owners.